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Date: August 4, 2005	Phone Number	Fax Number
To: Examiner Schubert		(571) 273-8300
From: Kevin J. Zilka		

Docket No.: NAI1P014/01.128.01**App. No: 09/916,929****Total Number of Pages Being Transmitted, Including Cover Sheet:** 04**Message:**

Please deliver to Examiner Schubert.

Thank you,

Kevin J. Zilka

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August 4, 2005

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**RECEIVED
CENTRAL FAX CENTER****AUG 04 2005
PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Chris A. Barton et al.

Application No. 09/916,929

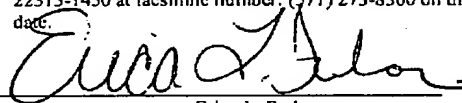
Filed: July 26, 2001

For: ANTI-VIRUS SCANNING CO-PROCESSOR

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)
) Group Art Unit: 2137
)
) Examiner: Schubert, Kevin.
)
) Date: August 4, 2005
)
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I hereby certify that this correspondence is being facsimile
transmitted to the Commissioner for Patents, Alexandria, VA
22313-1450 at facsimile number: (571) 273-8300 on the above
date.

Signed:


Erica L. Farlow

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION

Sir:

In response to the Office Action mailed March 22, 2005 and the Advisory Action
mailed July 06, 2005, and in furtherance of Amendment B mailed June 22, 2005,
applicant hereby requests reconsideration of the Examiner's failure to consider the
affidavit and accompanying evidence submitted with Amendment B.

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In the Advisory Action mailed July 06, 2005, the Examiner argues that an affidavit submitted with Amendment B on June 22, 2005 fails to overcome the 102(e) rejection under Grupe because the affidavit has not been seasonably presented.

However, affidavits submitted under 37 CFR 1.131 and other evidence traversing rejections are considered timely if submitted ... after final rejection and submitted ... with a first reply after final rejection for the purpose of overcoming a new ground of rejection or requirement made in the final rejection. See MPEP 709.15.

In the present application, prior to final, the Examiner issued a first Office Action on January 13, 2005 rejecting Claims 1-2, 4-14, 17-18, 20-30, and 33 under 35 U.S.C. 102(e) as being anticipated by Makita, U.S. Patent Application Publication No.: 2001/0007120. Thereafter, under final, the Examiner issued a final Office Action on March 22, 2005 rejecting Claims 1-2, 4-7, 9-13, 17-18, 20-23, 25-29, 33-35, 38-40, 42 and 44 under 35 U.S.C. 102(e) as being anticipated by Grupe (U.S. Patent Application Publication No. 2002/0194212).

Thus, it is clear that the Examiner had issued a new ground of rejection or requirement in the final rejection (the new reliance on Grupe), and applicant's submission of the 37 CFR 1.131 affidavit, under final, was for the purpose of overcoming such new ground of rejection or requirement. Applicant therefore requests that the 37 CFR 1.131 affidavit be considered.

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In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P014).

Respectfully submitted,
Zilka-Kotab, PC


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